

SHEPHERD & CALDWELL.

[To accompany bill H. R. No. 758.]

JANUARY 24, 1857.

Mr. FLAGLER, from the Committee on the Post Office and Post Roads, made the following

REPORT.

The Committee on the Post Office and Post Roads, to whom was referred the petition of John H. Shepherd and Walter K. Caldwell, late contractors on mail routes numbered 8818 and 8849, also on mail routes 8819 and 8872, in the State of Missouri, have had the same, and the proofs therewith submitted, under consideration, and respectfully report:

That in March, 1854, said Shepherd & Caldwell, being farmers in said county of Pike, put in a bid for carrying the United States mail on route 8818, from St. Charles to Hannibal, for three times a week during the suspension of navigation on the Mississippi, to wit: From the first of November till the first of March in two-horse coaches, and three times a week on horseback the balance of the year, for the sum of \$2,100 per year, with an additional clause to said bid by which they proposed to carry the mail on said route *six* times a week during the said four months—viz: from first of November till the first of March—in two-horse coaches for \$400 additional (or extra) pay, leaving it discretionary with the Post Office Department either to accept the bid for carrying the mail three times a week throughout the year, as aforesaid, for the sum of \$2,100 per year, or to accept it with the three additional trips during said four months for \$2,500 per year. That said Shepherd & Caldwell, at the same time, also put in a bid for carrying the United States mail on route No. 8849, from Hannibal, Missouri, to Keokuk, Iowa, three times a week for said period of the suspension of navigation on the Mississippi, to wit: From first of November till the first of March in two-horse coaches, and three times a week on horseback the balance of the year, for the price of \$1,460 a year, with the additional clause to said bid to perform *three extra trips* during said four months in two-horse coaches for the sum of \$500 extra or additional pay, leaving it discretionary with the Post Office Department either to accept the bid for the weekly service throughout the year, as aforesaid, for said sum of \$1,460, or to accept it with the extra trips during the said four months for the sum of \$1,960. But

soon after said bids were made and mailed to the Post Office Department, said Shepherd & Caldwell became satisfied that they had made a mistake in their estimate for carrying the mail for the said three extra trips during said four months, on each of the routes aforesaid, to the extent of at least \$700 a year on the former route and \$300 a year on the latter route, or \$1,000 per year on the two routes, making some \$4,000 of an under estimate for the four years, from the 1st of July, 1854, embraced by the proposals, (a mistake which, if their bid for the three additional trips for the said four months were accepted, and they held by the department to perform the same, would be ruinous to them, limited as were their means and small as was the margin left for any profit, independently of the three additional trips during the winter.) They at once notified the Post Office Department of said error against themselves, by letter and through the then member of Congress from their district, the Hon. Alfred W. Lamb, and requested to be allowed to withdraw so much of their said bids as related to the three additional or extra trips aforesaid; that the same was made purely by mistake, and that they could not possibly carry the mail at that rate for the three extra or additional trips. This notice and request was laid before the Post Office Department at least ten days before the opening and examination of the bids. After this, and on the opening and examination of said bids, said Shepherd & Caldwell were notified that their bids for tri-weekly service on said two routes were accepted; and the postmaster at St. Charles was notified that the said bid of Shepherd & Caldwell had been accepted for tri-weekly service on said first named route; that said Shepherd & Caldwell accordingly filled their bonds with satisfactory security (as required by the instructions of the department) for the tri-weekly service on each of said routes throughout the year, and forwarded and had them filed in the archives of the Post Office Department. This was done in accordance with their said notice to the department, before the said day of letting, and by the request of the department, which was sent along with the bonds in blank, and in accordance with the notice of the department to them in relation to route No. 8849, and the notice of the department to the postmaster at St. Charles and their printed schedule for the route, made out after the letting, and in accordance with the form of the bond sent to them in blank for route No. 8818, all of which was for tri-weekly service alone. Accordingly, on the first of July, 1854, they commenced to carry the mail on each of said routes, and continued to carry it, according to the stipulations of their said bonds, and apprehended no further difficulty, as it appears, on the score of the said erroneous proposal for the three times a week extra trips, till they received, in October, 1854, a letter from the Post Office Department, bearing date October 6, 1854, stating that the department would require them to perform the three extra trips during said four months, on both said routes, for which they would be paid the sums specified in the addition to their original bids sent on; and further stating, that "the clerk employed in drawing the contracts had omitted the additional service, during the suspension of navigation, proposed by them, and accepted by the Postmaster General in connexion with, and at the same time with, their bids for the regular

service. And that, under these circumstances, *new contracts*, embracing the additional service referred to, would be immediately sent them; and that it was expected they would execute them, and return them without delay;" and further stating that, "as they had been before informed, the Postmaster General *had no power to release them* from the obligation of their bids, and that it would become his duty, in case of refusal or failure to perform their part of said obligations, to proceed to relet said routes on the best terms practicable, and charge the damages which might accrue to themselves and their guarantors, for the collection of which the law required a suit in the United States court to be instituted." Under all the circumstances above stated, the said Shepherd & Caldwell did not consider (having acted throughout in good faith, and given the department fair and sufficient notice of *their* mistaken bid, and the department, by its agent's act, seeming to yield to their reasonable request in that behalf) themselves bound, or called on, in morals and good conscience, to enter into the said "new contracts," which they could not, under the peculiar circumstances, perform—if, indeed, they could under any circumstances have done so—and, consequently declined to enter into said "new contracts" so sent to them; but informed the department that they were still willing to go on and perform the service on said routes according to their bonds already given, and filed as aforesaid, or that they were willing that the routes should be let to any other contractors, on condition that the department would release them from further liability on their obligations already filed. This information was communicated to the department by the Hon. Alfred W. Lamb, at their instance. They still continued to carry the mails on said routes, according to their said bonds, tri-weekly—on said route 8818 up to the 1st of February, 1855, and on said route No. 8849 until the 15th of January, 1855, at which dates respectively, or thereabouts, said routes were relet, and the difference charged to said Shepherd & Caldwell, as it appears. The said Shepherd & Caldwell also bid for and had awarded to them, at the same time with the two above named, two other mail routes—viz: routes numbered 8819 and 8872—on which they entered upon the performance of service. Their pay on these two last named routes was withheld, to make good the damages on the two first named routes, and nothing paid them for their services on any of them. Your committee think the said Shepherd & Caldwell should be paid for the times they actually carried the mails on said routes 8818 and 8849, and that, in view of all the circumstances, they should be relieved from all liability consequent upon their having been held to a rigid compliance with their proposals, the performance of which, in full, a *mistake* on the part of the department (as it is alleged to be) gave them good reason to conclude they were forever relieved and exempted from. The amount in question is a small matter to the government, whose policy should ever be to deal fairly and equitably, and not harshly nor oppressively, with its citizens. An enforcement of the extreme legal power of the government in the premises your committee think would oppress the petitioners, and do them great and manifest injustice; the allowance of the prayer of their petition, while it will do "no wrong" to the government, will be the occasion

of affording a just measure of relief to two of its citizens, who, in the only way left to them, have appealed to its equity and justice. They accordingly report a bill, and recommend its passage.